



FH

STATE OF WISCONSIN
Division of Hearings and Appeals

In the Matter of

[REDACTED]
[REDACTED]
[REDACTED]

DECISION
Case #: FOS - 206391

PRELIMINARY RECITALS

Pursuant to a petition filed on September 26, 2022, under Wis. Stat. § 48.64(4), and Wis. Admin. Code § DCF 56.10(1), to review a decision by the Trempealeau County Department of Soc Services regarding Foster Care, a hearing was held on December 21, 2022, by telephone.

The issue for determination is whether the department correctly denied the petitioners' application for a foster care license.

There appeared at that time the following persons:

PARTIES IN INTEREST:

Petitioner:

[REDACTED]
[REDACTED]
[REDACTED]

Respondent:

Department of Children and Families
201 West Washington Avenue
Madison, WI 53703

By: Atty. Evan Holder
Trempealeau County Department of Soc Services
36245 Main St.
PO Box 67
Whitehall, WI 54773-0067

ADMINISTRATIVE LAW JUDGE:
John P. Tedesco
Division of Hearings and Appeals

FINDINGS OF FACT

1. Petitioner (CARES #) is a resident of Trempealeau County.
2. On 9/30/22 the county issued a notice of denial of the petitioner's request for a foster care license.

3. Petitioner was convicted in 2006 with the criminal offense of aggravated assault with a weapon. The weapon in that case was petitioner's car.
4. Petitioner was convicted in 2010 with the criminal offense of aggravated assault with a weapon. The weapon in that case was a knife.
5. Petitioner was convicted in 2010 with the criminal offense of theft for stealing liquor.
6. During the application review process, petitioner did not disclose the theft conviction to the county.

DISCUSSION

Petitioner was denied a foster care license on two bases. The first is that she has a criminal history which she did not fully disclose on her background check per Wis. Admin. Code Section DCF 56.055(2)(d). See Wis. Admin. Code Section DCF 56.055(1)(a)1. The second basis is that petitioner fails to meet the personal requirements under Wis. Admin Code Section DCF 56.05(1)(a)1.

Under Section 56.05 a licensee must demonstrate certain characteristics:

DCF 56.05 Licensee qualifications.

(1) PERSONAL REQUIREMENTS AND BACKGROUND.

(a) General.

1. ***A person licensed to operate a foster home shall be a responsible, mature individual who is fit and qualified, exercises sound judgment, displays the capacity to successfully nurture foster children, does not abuse alcohol or drugs, and does not have a criminal conviction, pending criminal charge, or a finding by a governmental body of a civil or criminal violation of statutes, regulations, or ordinances that is substantially related to the care of children or the operation of a foster home. In determining whether a criminal conviction, pending criminal charge, or finding by a governmental body is substantially related to the care of children or the operation of a foster home, the licensing agency shall apply the factors in s. DCF 12.06.***
2. ***The applicant or licensee shall give truthful and sufficient information to enable the licensing agency to verify whether or not the applicant or licensee meets the requirements under subd. 1.***
3. ***In determining whether a person is fit and qualified, the licensing agency shall consider the person's qualifications under this section and whether the person has a criminal conviction, pending criminal charge, or any finding by a governmental body of a civil or criminal violation of statutes, regulations, or ordinances of the United States, this state, any other state, any local government, or any other U.S. jurisdiction that is substantially related to the care of children or the operation of a foster home.***

Wis. Admin. Code Section DCF 56.05(1)(a) (bold added for emphasis).

DCF 12.06 Determining whether other offenses are substantially related.

- (1) ***CAREGIVERS AND CONGREGATE CARE WORKERS.*** To determine whether a caregiver's or a congregate care worker's conviction or delinquency adjudication for an offense that is not a serious crime is substantially related to the care of a client or the activities of a program for purposes of s. [48.685 \(5m\)](#), Stats., an agency or entity shall consider all of the following:

- (a) In relation to the job or caregiving role, all of the following:*
- 1. The nature and scope of the caregiver's or congregate care worker's client contact.*
 - 2. The scope of the discretionary authority and independent judgment the caregiver or congregate care worker has to make decisions or take actions that affect the care of clients.*
 - 3. The opportunity the job or caregiving role presents for committing similar crimes.*
 - 4. The extent to which acceptable performance in the job or caregiving role requires the trust and confidence of clients and the parents or guardians of clients.*
 - 5. The amount and type of supervision received.*
- (b) In relation to the criminal conviction or delinquency adjudication, all of the following:*
- 1. **Whether intent is an element of the crime.***
 - 2. Whether the elements or circumstances of the crime are related to the job or caregiving duties.*
 - 3. **Any pattern of criminal convictions or delinquency adjudications***
 - 4. The extent to which the crime relates to clients or other vulnerable persons*
 - 5. **Whether the crime involves violence or a threat of harm***
 - 6. Whether the crime is of a sexual nature*
- (c) In relation to the person, all of the following:*
- 1. The number and type of crimes for which the person has been convicted or adjudicated delinquent.*
 - 2. The length of time between the conviction or delinquency adjudication and the decision affecting regulatory approval, employment, or contract.*
 - 3. The person's employment history, including references, if available.*
 - 4. The person's participation in or completion of pertinent programs of a rehabilitative nature.*
 - 5. The person's probation, extended supervision, or parole status.*
 - 6. The person's ability to perform or to continue to perform the job or caregiving role consistent with the safe and efficient operation of the program and the confidence of clients and the parents or guardians of clients.*
 - 7. The age of the person on the date the crime was committed.*

In this case, the county did not provide certified judgments or criminal background records. The county did not provide CPS reports. Indeed, the only document submitted by the county was the denial notice itself. But, petitioner did not dispute many of the facts as alleged by the county. Petitioner concedes many of the significant facts as alleged and these are included in the findings of fact above. I am not considering any of the facts alleged by the agency that were not conceded by petitioner as these are supported only by the county worker's testimony that she reviewed certain records and documents which were not offered. For example, the allegations relating to "minors drinking alcohol at the home along with smoking weed and snorting Adderall while [petitioner] was out of town" is not considered as true as this was not conceded by petitioner and was not otherwise supported in the hearing record by any of the documents the county worker claims to have reviewed.

Petitioner conceded that she "forgot" a theft conviction when reporting her criminal record to the agency as part of the application process. Petitioner conceded to various criminal convictions including the offenses noted in the findings of fact. I find that the two offenses for aggravated assault with a weapon meet the requirement of being substantially related to a caregiving role in that there were two convictions for the same offense, that this was inherently an offense involving a threat of harm with a weapon, and that the first of the offenses took place as a domestic violence incident. The second incident was against a purported "friend." I further note that any aggravated battery offense would be one requiring an intent element. These offenses do not demonstrate sound judgment of a fit and qualified caregiver of a child.

Petitioner did little during the hearing to show that she has taken responsibility for her past conduct or been rehabilitated. Instead, she took most of her hearing testimony to complain about the county's unfair treatment of her. I note that another consideration for the county is whether a license applicant exhibits "[a]n outlook regarding the licensee's own history that indicates that any negative aspects have been recognized and adequately addressed." *See* Wis. Admin. Code Section DCF 56.05(1)(b)1.e.

At hearing, petitioner repeatedly stressed that she was continually told by the county that she would be getting a foster care license despite all the various disclosures she made to the agency. Petitioner made little effort at hearing to explain why she should be eligible despite all the various concerns raised by the county. As a reviewing judge, it matters little to me what petitioner was told in the process leading up to the county's decision. I am reviewing only whether the county's denial was an erroneous exercise of their discretion to decide whether a person is eligible for a license.

I find that the denial was not an erroneous exercise of discretion. The county, on the facts of this case, exercised its discretion and applied the correct factors in considering the license application. That the county determined that petitioner is not fit and qualified based on the significant offense history including weapon offenses involving express or implied threats to others safety. I recognize that the offenses are somewhat dated. Although, I do not find support for petitioner's claim that "you can only go back so far." *See* Wis. Admin. Code Section DCF 56.055(2)(a), (b), and (d). But, I have no inclination in the least to find that the county erred.

CONCLUSIONS OF LAW

The county did not err in its denial of the foster care license.

THEREFORE, it is

ORDERED

That this appeal is dismissed.

REQUEST FOR A REHEARING

You may request a rehearing if you think this decision is based on a serious mistake in the facts or the law or if you have found new evidence that would change the decision. Your request must be **received within 20 days after the date of this decision**. Late requests cannot be granted.

Send your request for rehearing in writing to the Division of Hearings and Appeals, 4822 Madison Yards Way, 5th Floor North, Madison, WI 53705-5400 **and** to those identified in this decision as "PARTIES IN INTEREST." Your rehearing request must explain what mistake the Administrative Law Judge made and why it is important or you must describe your new evidence and explain why you did not have it at your first hearing. If your request does not explain these things, it will be denied.

The process for requesting a rehearing may be found at Wis. Stat. § 227.49. A copy of the statutes may be found online or at your local library or courthouse.

APPEAL TO COURT

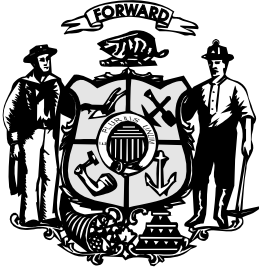
You may also appeal this decision to Circuit Court in the county where you live. Appeals must be filed with the Court **and** served either personally or by certified mail on the Secretary of the Department of Children and Families, 201 West Washington Avenue, **and** on those identified in this decision as "PARTIES IN INTEREST" **no more than 30 days after the date of this decision** or 30 days after a denial of a timely rehearing (if you request one).

The process for Circuit Court Appeals may be found at Wis. Stat. §§ 227.52 and 227.53. A copy of the statutes may be found online or at your local library or courthouse.

Given under my hand at the City of Madison,
Wisconsin, this 18th day of January, 2023



\s _____
John P. Tedesco
Administrative Law Judge
Division of Hearings and Appeals



State of Wisconsin\DIVISION OF HEARINGS AND APPEALS

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The preceding decision was sent to the following parties on January 18, 2023.

Trempealeau County Department of Soc Services
DCF - Foster Care